



REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**  
NEW ENGLAND DISTRICT, CORPS OF ENGINEERS  
696 VIRGINIA ROAD  
CONCORD, MASSACHUSETTS 01742-2751

May 21, 2003

Regulatory Division  
CENAE-R  
File No. 200103091

Gene Muhlherr  
Islander East Pipeline Company LLC  
1284 Soldiers Field Road  
Boston, Massachusetts 02135

Dear Mr. Muhlherr:

This letter refers to your application for a Department of the Army permit to upgrade existing Algonquin natural gas facilities; construct a new interstate natural gas compressor station in Cheshire, Connecticut; construct approximately 50.4 linear miles of new 24" natural gas pipeline commencing from an existing meter station in North Haven, Connecticut and terminating at planned power plants in Brookhaven and Calverton, New York. This letter is intended to supplement the discussion we had with you at a meeting on April 25, 2003.

The upgrade and new pipeline right of way will traverse waterbodies in the States of Connecticut and New York; impact wetland areas in the States of Connecticut and New York, and commence a crossing of Long Island Sound in the vicinity of Juniper Point at Branford, Connecticut with a landfall in the vicinity of Wading River, New York.

The objective of this letter is fourfold: 1) to discuss the requirements of the Clean Water Act Section 404(b)(1) Guidelines (Guidelines), 2) to convey the Corps of Engineers (Corps) definition of "overall project purpose" which will be used in the evaluation of practicable alternatives under the Guidelines, 3) to discuss the level of detail your Alternatives Analysis will have to fulfill before a Department of the Army permit can be issued and, 4) to respond to items in your letter of February 20, 2003.

**Clean Water Act 404 (b)(1) Guidelines**

Environmental Protection Agency (EPA) Guidelines (40 CFR 230 et seq.), our regulatory guidelines (33 CFR 320 et seq.), the National Environmental Policy Act (NEPA) and the NEPA Guidelines (40 CFR 1500 et seq.) are the substantive environmental criteria used by the Corps to evaluate permit applications. When we evaluate a request for a permit, an analysis of practicable alternatives is the primary screening mechanism used to determine the appropriateness of permitting a discharge of fill or dredged material into a special aquatic site. The objective of the alternative analysis is to identify

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practicable alternatives that meet the overall project purpose, and also to describe the environmental impacts associated with each practicable alternative.<sup>1</sup>

For both, water-dependent and non-water dependent activities, the Guidelines prohibit a discharge if a practicable alternative to the proposed project exists that would have less adverse impact on the aquatic ecosystem, but does not in itself have greater environmental consequence. However, if a project is not water dependent (i.e. does not require access to or siting in a special aquatic site to fulfill the basic project purpose) and proposes to discharge into a special aquatic site, the Guidelines presume that a less environmentally damaging practicable alternative exists. In the case of a non-water dependent activity, a permit will not be issued unless the applicant can clearly refute the regulatory presumption that a less environmentally damaging practicable alternative (LEDPA) exists (40 CFR 230.10 [a][2]).

### Project Purpose

The “basic purpose” of a project is the fundamental, essential or irreducible purpose of the proposed project and is used to determine if an activity is “water dependent.”

The basic project purpose of the Islander East project is *transmission of natural gas*, and consequently, is considered a non-water dependent activity.

The “overall project purpose” is determined by the Corps from the applicant’s perspective, and is defined for the purpose of rebutting the presumption that a LEDPA to the discharge of dredged or fill material is presumed to exist. A determination of “overall project purpose” is central to the interpretation and implementation of the Guidelines’ “practicable alternative” test. Consequently, we are required to exercise independent judgment in defining the purpose and need for the project, from both the applicant’s and the public’s perspective, to ensure that the discussion of practicable alternatives is guided by the rule of reason, with due consideration of the applicant’s wishes and capabilities, but also to ensure that the range of potential practicable alternatives is not unduly restricted.<sup>2</sup>

We have determined that the overall project purpose of the Islander East project is *to construct and operate a pipeline with the capability to deliver up to*

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<sup>1</sup> An alternative is considered practicable if it is “available and capable of being done after taking into consideration cost, existing technology, and logistics in light of the project purpose” (40 CFR 230.10 [a][2]).

<sup>2</sup> In this particular case, the Corps defers to the Federal Energy Regulatory Commission (FERC) as the federal agency with the authority pursuant to the Natural Gas Act to regulate and determine the need for construction and operation of interstate natural gas pipelines.

*260,000 Dth/day of natural gas to energy markets in CT, New York City and Long Island, NY.*<sup>3</sup>

It is this project purpose that we will use in the evaluation of practicable alternatives to the proposed project and to determine whether the proposed project is in conformance with the Guidelines.

The administrative record before us (list of documents attached) lacks adequate documentation of the screening process used by Islander East to identify potential pipeline system alignments, and the specific criteria ultimately used to select the preferred configuration.

In addition, the project purpose used to conduct the analysis of alternatives pursuant to NEPA, analyzed by the Federal Energy Regulatory Commission (FERC) in the Draft and Final Environmental Impact Statements dated March 2002 and August 2002 respectively, appears to be too narrowly defined for a reasonable analysis of alternatives pursuant to the Guidelines. The project purpose identified in the EIS documents and associated supporting documentation may preclude consideration of alternatives to the proposed pipeline alignment, which would have less impact on the aquatic ecosystem.<sup>4</sup>

In a June 17, 2002 letter to the Secretary of the FERC, in response to the Draft Environmental Impact Statement (DEIS), we pointed out the situation and indicated that analysis of the alternatives presented in the DEIS resulted in one of two possible conclusions: 1) the proposal fails to comply with the Guidelines based on the fact that there is not sufficient information in the record to determine if the proposed activity is the LEDPA, or 2) there appears to be a practicable alternative to the proposed discharge that would have less adverse impact on the aquatic ecosystem, in light of the "overall project purpose."

At least one of the system alternatives considered by the FERC contemplates use of the existing Iroquois Gas Transmission System (IGTS) to transport the natural gas capacity proposed by Islander East.<sup>5</sup> Although the

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<sup>3</sup> This is the project purpose, as defined in the March 22, 2002 § 404 application and the original February 13, 2002 § 401 application.

<sup>4</sup> The applicant stated project purpose used by the FERC for comparison of reasonable and practicable alternatives to the proposed project under NEPA, as identified in the EIS documents and Resource Report No. 10, is to *provide 260,000 Dekatherms per day of natural gas from supply areas in the northeast to energy markets in CT, New York City and Long Island, NY by November 2003, increase reliability of natural gas delivery services to Long Island by installing a separate natural gas pipeline across Long Island Sound, integrate market access between New England and New York, and enhance access to natural gas reserves near Sable Island through proposed interconnection with Maritimes & Northeast Pipeline Company.*

<sup>5</sup> The FERC indicates that the purpose of system alternatives is to determine whether another combination of pipeline facilities could potentially be used to further minimize environmental activities while still meeting the goals of the proposed project. However it is important to note that, in this case, the Corps' evaluation of alternatives pursuant to the Guidelines is likely to

FERC indicates that the Eastern Long Island Extension alternative (ELI) "is environmentally preferable to the proposed route," the alternative was eliminated for reasons related to issues such as "flexibility and reliability of the interstate pipeline grid, competition, market need, precedent agreements or lease agreements." Another reason cited is the fact that the FERC has determined that the IE proposal is "environmentally acceptable" with appropriate mitigation.

In its filing, "*Comments of Islander East Pipeline Company, LLC and Algonquin Gas Transmission Company on Draft Environmental Impact Statement*" to the FERC, IE indicates that elimination of "system alternatives" incorporating use of the IGTS network are not related to the essential elements of technical capability, engineering feasibility, nor financial impossibility. IE states that the extension alternative is not practicable because it would not meet Islander's in service goal of November 2003, each alternative would require significant additional time to be developed, new project entities would need to be structured and formed, new precedent agreements would need to be negotiated, new lease arrangements would need to be negotiated, new certificate applications would need to be filed, new scoping and landowner outreach meetings would need to be held, new regulatory permits would need to be obtained, and time consuming additional environmental review would be required. IE concludes that system alternatives utilizing IGTS facilities cannot meet the time frame for providing service to Islander East customers, and for that reason alone, cannot be considered a viable alternative to the Islander East Pipeline Project.

As we stated in our June 17, 2002 letter to the FERC, and reiterated during our meeting on April 25, 2003, the record must contain sufficient information to demonstrate that the proposed discharge complies with the requirements of Section 230.10(a) of the Guidelines. The amount of information needed to make such a determination, and the level of review should be commensurate with the severity of the environmental impact and scope or complexity of the proposed discharge activity. Therefore, we will need additional information.

### **Additional Information Required**

The purpose of the next section is to discuss the level of detail the analysis of alternatives in the file will have to fulfill, and to identify what information is necessary so that we can properly evaluate the proposal. It is also intended to clarify and supplement the discussion that we had with representatives of IE and Duke Energy on April 25, 2003. We respectfully request that Islander East provide the following supplemental information so that we may make a determination of compliance with the Section 404 (b) (1) Guidelines, and commence our public interest review.

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differ from that of the FERC in the NEPA documents, as a direct result of dissimilar interpretation of the "overall project purpose."

## Pipeline System Alternatives

Summarize, preferably in tabulated or matrix format with a supporting narrative and reference to the data and resources/literature used, the process Islander East employed to identify and screen potential system alternatives, including:

1. Minimum criteria considered for the siting and configuration of pipeline alternatives for the proposed delivery of up to 260,000 dth/day natural gas, including:
  - a. Technical capability
  - b. Engineering feasibility
  - c. Operational needs
  - d. Site specific facility requirements
  - e. Integration of project components (such as contractual and lease agreements)
  - f. Financial feasibility/construction costs
2. Environmental impacts (pros and cons) associated with each alternative developed as per item 1 above. Specifically, include consideration of utilizing existing corridors or areas of past or present disturbance including alternatives that expand IGTS, Parallel IGTS, connect to AGT E-1 System, connect to Algonquin Transmission System (AGT) Guilford, connect to Tennessee Gas Pipeline. Show how potential environmental impacts for each alternative were weighed against other criteria listed above, as well as feasibility of using existing infrastructure. Identify why each alternative was eliminated/not chosen as the preferred alternative.
3. Environmental impacts of an alternative that employs the Long Island Sound portion of the recently withdrawn IGTS ELI Extension Project, which now appears to be an option available to IE, and which also appears to have less overall environmental impact. Include discussion of:
  - a. Construction of additional land-based compression facilities at Milford and Brookfield, CT.
  - b. Construction of a larger diameter pipe (24"), with the capacity to carry the anticipated 260K Dth/day of gas along the existing IGTS ROW.
  - c. Construction of a tie-in situated approximately 2 miles offshore from the Iroquois landfall in Milford, CT.

- d. Applicability of offshore construction minimization strategies, as submitted in amended application on February 20, 2003 and described in meeting minutes on March 4, 2003 and April 15, 2003, to pipeline installation in the New York nearshore environment.

#### Anticipated Future Needs

4. IE, in its response to comments on the Public Notice, indicates that the location of a tie-in to the IGTS pipeline offshore would result in pressure drops and "bottlenecks" on the pipeline system, hindering future expandability. Explain what this means to the ability of a tie-in to the pipeline to carry the requested 260,000 Dth/day of gas and discuss what technological solutions are currently available to address the condition.
5. IE anticipates future transport of 445,000 Dth/day natural gas for its initial shippers. Indicate how IE would expand capacity of the proposed 260K Dth/day transmission system without incurring additional environmental impact. Describe conceptual facilities and technology needed to supply the above-predicted quantity of natural gas to be delivered, sufficient to demonstrate that additional environmental impacts will be avoided.

#### Least Environmentally Damaging Practicable Alternative

6. Evaluation/demonstration of how the preferred alternative is the Least Environmentally Damaging Practicable Alternative.

#### Documentation

7. Provide us with the following documents:

The alternatives analysis IE completed as part of its application to the FERC for a Certificate of Public Convenience and Necessity. This application was incorporated by reference in the Section 10/404 application.

- The Memorandum submitted to Paul Martin by Roman Zajac on January 26, 2003, cited in the amended Section 10/404 application.
- IGTS' response to the FERC's April 23, 2002 data request cited in the Section 10/404 application.
- The study conducted by the Gas Research Institute (1994) cited in IE's response to comments.

The Centaur Associates, Inc. 1984 technical paper entitled "*Mitigation of Sea Floor Conflicts Between Oil and Gas Pipelines and Commercial Trawl Fisheries on the California Outer Continental Shelf*" cited in IE's response to comments.

The information referenced in your March 4, 2003 interagency meeting minutes pertaining to the impact of anchor strikes and cable sweep associated with the 1991 installation of the Iroquois pipeline.

Two color copies of OSI's Marine Geophysical Survey Report dated May 18, 2001.

### Restoration

8. Provide a restoration plan for the temporary loss of functions and values of molluscan shell substrate and hard benthic substrate habitat. The plan should include a discussion of the feasibility of on-site in-kind restoration, monitoring and remediation plan by installation of the proposed project as described in the February 20, 2003 amended application.
9. The Engineering Backfill Plan dated March 2003 identifies a backfill tolerance of +2'/-1' from ambient seafloor for restoration of the trench. Identify what measures will be employed to ensure the proposed tolerance is reached, post-construction.
10. In reference to the proposed backfill plan and the molluscan substrate compensatory mitigation plan identified above, identify what options IE evaluated to stabilize and provide pipeline integrity while minimizing habitat modification and providing suitable substrate replacement.

### Minimization and Contingency Planning

11. In the event that the HDD installation cannot be completed as currently planned, provide a contingency plan that provides detailed information regarding alternate locations and installation techniques.
12. Discuss the benefits and detriments of siting the HDD alignment and exit hole within the footprint of the Tilcon shipping channel to minimize dredging and to prevent potential damage to shellfish beds in the event of inadvertent release of drilling muds.

### Wetland Impact and Long-term Monitoring

13. Provide a detailed environmental assessment of the functions and values of all of the wetland areas to be impacted. The assessment should be a qualitative description of the physical characteristics of

the wetlands, including a determination of the principal functions and values exhibited, and the basis for the conclusions, consistent with the Corps of Engineers, "*Descriptive Approach to Functions and Values Assessment*."

14. Update the table of permanent and temporary wetland impacts (acreage table in the Section 404 application, page 22). There appears to be a discrepancy between this table and the acreage table submitted in the March 2003 Section 401 application.
15. Provide a plan for the long-term monitoring and control of non-native invasive plants along the entire upland portion of the proposed pipeline route.
16. The proposed amendment to the Section 10/404 application, dated February 20, 2003 indicates intent to dispose of dredged material at one of Long Island Sound's open water disposal sites. We are currently evaluating the vibracore sampling and laboratory test results to determine the documents' applicability for use in planning of dredged material disposal. We will notify you if additional sampling will be required. However, to facilitate dredged material disposal coordination please provide a summary of the intended dredging activity, including:

Amount of material proposed to be removed, in total, verses the amount of material proposed to be placed at a designated open water disposal site.

Total area of dredging (sf or acres).

Dredging depth (MLW).

Existing depth (MLW)

17. In order to assist us in understanding the distribution of natural gas resources on a regional level, please provide us with a gas pipeline infrastructure map of the Northeast United States, if available.
18. We are in receipt of the Connecticut Department of Environmental Protection, Office of Long Island Sound Program's (OLISP) May 5, 2003 letter to Mr. Gene Muhlherr. Please provide us with a complete copy of IE's response to the OLISP's requested materials, when available.

### **February 20, 2003 Letter**

Finally, we would like to take this opportunity to respond to statements in the above-referenced letter, as well as specific items documented in the minutes of interagency meetings convened by Islander East on March 4, 2003 and April 15, 2003. Following denial of the Coastal Zone Management Consistency (CZMC) Determination on October 15, 2002, and IE's appeal of the state CZMC decision to the Department of Commerce on November 14, 2002,



we participated in a meeting on February 3, 2003 to discuss possible modifications to offshore construction methodologies IE believed had the potential to minimize adverse impacts to nearshore aquatic resources in Long Island Sound. We agreed to participate in the technical discussion but noted that discussion of, and/or potential agreement with minimization techniques discussed at the meeting, would not in itself constitute resolution of the considerable regulatory-related issues of project compliance with the Clean Water Act 404 (b) (1) Guidelines. Following technical discussion, we received an amended application on February 20, 2003. IE convened two additional technical discussion meetings on March 4, 2003 and April 15, 2003.


First, the February 20, 2003 IE transmittal stated that, "Due to resolution of some of the regulatory issues surrounding the project, Islander East understands, based on discussion with our consultant, that the COE has reinstated the processing of its Section 10 and 404 permit application." The letter went on to request written confirmation of the status of the application.

*There has been no resolution of regulatory issues as a result of the above-mentioned technical discussion. We indicated that the proposed modifications to the offshore installation methodology appeared to minimize the nearshore aquatic impact of pipeline installation, and we agreed to consider the project modifications as minimization measures when evaluating the application after IE reached resolution of coastal consistency issues with the State of Connecticut. Additionally, we indicated that the status of the application had been upgraded to that of a pending future file to adequately document technical discussions and the on-going coordination between Islander East and the various regulatory and federal resource agencies.*

*Subsequent to this discussion and upon notification by IE of the Department of Commerce' stay of the CZMC appeal granted on March 14, 2003, we indicated that we would resume processing of IE's application to ensure that the Section 10/404 review commenced concurrently with the OLISP's review of the application. Our review of the application resumed on March 21, 2003.*

Second, in the minutes of the March 4, 2003 technical meeting, the group discussed whether the proposed project is the LEDPA. IE states that, "It was agreed that with the withdrawal of the Iroquois [application] and the modifications to the Islander East [project], the route alternatives discussion was limited."

*As discussed in detail above, no such agreement on the scope of route alternatives has been reached, and we reiterate that the minimization of offshore impacts does not constitute resolution of project compliance with the 404 (b) (1) Guidelines. Also noted above, the record does not currently support a determination that the proposed project is the LEDPA, and*



*withdrawal of Iroquois' application before the FERC does not eliminate the ELI system alternative from consideration or change the alternative's potential availability to IE.*

Third, in the minutes of the April 15, 2003 technical meeting, opening remarks from Gene Muhlherr (IE) indicated that the purpose of this meeting was to "reach consensus that the Islander East Pipeline methods to minimize environmental impacts addressed the federal and state agencies environmental concerns about the project."

*We would like to reiterate that the stated (IE) purpose of the technical meetings was to discuss possible technical modifications to the proposed offshore installation methodology, not reach consensus on the environmental acceptability of the proposed project. We qualified our participation in the technical discussion by our initial participation statement indicating that discussion of, and/or potential agreement with minimization techniques discussed at these meetings, would not in itself constitute resolution of regulatory-related issues.*

In these minutes, IE also concluded that sufficient information had been developed and presented to allow the regulating agencies to move forward in processing IE's permit application. The meeting minutes go on to state that the route certificated by the FERC and presented in IE's application, was the only route that CT DEP would be reviewing and that the route alternatives were sufficiently evaluated by the FERC during the certification and NEPA process, and consequently, the final route had been determined.

*We disagree, and refer IE back to the discussion above which indicates that the administrative record before us lacks adequate documentation of the screening process used by IE to identify potential pipeline system alignments, and the specific criteria ultimately used to select the preferred configuration.*

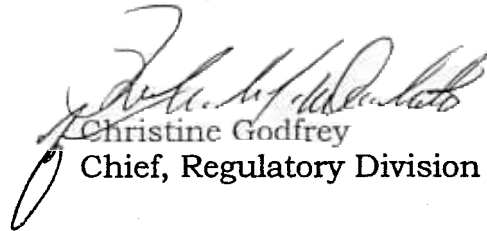
*Also, the CT DEP has informed us that IE must fully evaluate project alternatives and demonstrate that there are no other feasible alternate alignments that would avoid and minimize impact to aquatic resources and meet project goals.*

In conclusion, we appreciate your continued cooperation in providing the information necessary to complete review of the subject application, and we would like to thank you for taking the time to discuss your proposal with us on April 25, 2003. In particular, we would like to commend you for your proactive participation to undertake modifications to the proposed offshore methodology to minimize and mitigate for impacts associated with the proposed

activity. When you submit the above-requested information, we would like to schedule a meeting, at your earliest convenience, to discuss the content of the submittal.

If you have any questions concerning this matter, please contact Ms. Cori M. Rose, of my staff, at (978) 318-8306.

Sincerely,



Christine Godfrey  
Chief, Regulatory Division

Copies Furnished:

CT DEP, OLISP  
Attn: Mr. Peter Francis  
79 Elm Street  
Hartford, CT 06106

NMFS  
ATTN: Mike Ludwig  
212 Rogers Avenue  
Milford, CT 06460

US FWS  
Attn: Greg Mannesto  
PO Box 307  
Charlestown, RI 02813

US EPA  
Attn: Mike Marsh  
Region I  
One Congress Street, STE 1100  
Mail Code SEE  
Boston, MA 02114-2023

Federal Energy Regulatory Commission  
Office of Energy Projects  
Attn: Joanne Wachholder  
888 First Street, N.E.  
Washington, DC 20426



State of Connecticut  
Department of Agriculture  
Bureau of Aquaculture  
Attn: David Carey  
P.O. Box 97  
Milford, CT 06460

Islander East Pipeline Company LLC  
Attn: Joe Reinemann  
454 East Main Street  
Route 1  
Branford, CT 06405

Natural Resource Group, Inc.  
Attn: Elizabeth Dolezal  
1000 IDS Center  
80 South Eighth Street  
Minneapolis MN 55402

Honorable Rosa L. DeLauro  
Member of Congress  
59 Elm Street, 2<sup>nd</sup> Floor  
New Haven CT 06510

United States Department of Commerce  
NOAA, Office of General Counsel  
Attn: Branden Blum  
1305 East West Highway  
Room 6111 SSMC-4  
Silver Spring, MD 20910

Assistant Attorney General  
Robert Snook  
55 Elm Street  
Hartford CT 06106

**ISLANDER EAST APPLICATION MATERIALS**  
200102091

<b>REPORT TITLE</b>	<b>DATE</b>
HDD Monitoring Plan & Operations Plan (TRC)	February 4, 2002
Marine Pipeline Installation Methodology	February 4, 2002
Concepts for Subsea Containment of Drilling Fluid	March 2002
Erosion Sedimentation Erosion Control Plan	May 7, 2001
Branford Land Trust Properties Invasives Control Plan	May 2002
LIS Sampling, Analysis & Study Plan	August 2001
NRCS Seeding Mixtures & Invasive Species Documentation	May 7, 2002
Sedimentation Effects on Fish Shellfish and Lobsters	March 27, 2002
Protected Species & Essential Fish Habitat Report	June 2001
LIS Finfish Characterization & Impact Assessment	February 2002
Preliminary Marine Sediment Dispersion Study (Bohlen)	April 8, 2002
Bottom Characterization Survey Nearshore Juniper Point (Pellegrino)	January 2002
Marcobenthic Community structure (Pellegrino)	January 2002
Ecological Impacts of Dredging (Zajac)	March 2002
ROV Seafloor Analysis Report (Zajac)	August 2002
Results of SSFATE Model Simulations (ASA)	February 23, 2002
Evaluation of Benthic Impacts Associated with Offshore Construction Techniques	February 17, 2002
Calverton Lateral Route Variations Alignment Sheets	June 19, 2002
Calverton Lateral Wetland Delineation Addendum 1 (TRC)	February 2002
Calverton Lateral Wetland Delineation Addendum 2 (TRC)	June 2002
New York Wetland Delineation Report (TRC)	August 2001

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Resource Report No. 1 General Project Description	June 2001
New York State Water Quality Certification	February 7, 2003
Response to Question 19 of FERC May 24, 2002 Environmental Information Request (Offshore footprint)	June 3, 2002
Unexpected Contamination Encounter Plan	July 2002
Dredged Material Mound Dispersion Analysis Report LTFATE (ASA)	July 2002
Bedrock Assessment Findings (Triton Environmental)	July 25, 2002
Long Island Landfall HDD Plan and Profile	June 18, 2002
Laboratory Soil Test Results (Haley & Aldrich)	January 2002
Revised Impact Tables for CT and NY	October 2002
Virbracore Sampling Report (TRC)	February 4, 2002
Marine Geophysical Survey Program (OSI)	May 18, 2001
CT Wetland Delineation Report (TRC)	August 2001
Site Specific Wetland & Waterbody Crossings (NRG)	August 2002
Offshore Alignment Sheets (PCS)	October 2002
CT Wetland Delineation Report Addendum 1	October 2001
CT Wetland Delineation Report Addendum 2	January 2002
Botanical Plant Survey (TRC)	September 2001
Coastal Consistency Report (TRC)	February 7, 2002
Impact Analysis Report (TRC)	February 12, 2002
IE and AGTC comments on DEIS	May 2002
Amendment to 10/404 Application	February 20, 2003
Amendment to the 401 WQC Application	February 19, 2003

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